

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Mortgage Originator
License of Mortgage Capital Resource
Corporation, Department of Commerce
File Nos. MO2007492/CMF and
MO2004897/CMF.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for Hearing before Administrative Law Judge Phyllis A. Reha on December 4, 2000 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401.

Jennifer S. Kenney, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce. There was no appearance by or on behalf of the Respondent, Mortgage Capital Resource Corporation, 2038 Iowa Avenue, #100, Riverside, CA 92507 and/or Mortgage Capital Resource Corporation, 3001 Redhill Avenue, Building One, Suite 204, Costa Mesa, CA 92626. The record closed on December 4, 2000.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55101, telephone (651) 297-3238 for information on filing exceptions and presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether the Commissioner of Commerce should take adverse action against the Mortgage Originator License of Mortgage Capital Resource Corporation.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent, Mortgage Capital Resource Corporation was initially licensed as a residential mortgage originator, license No. 20187248, on July 16, 1999.^[1]

2. On June 26, 2000 the Department received a complaint from Daryl Harmon regarding Respondent's failure to disburse funds for a \$69,000 loan that Mr. Harmon had with Respondent, secured by a second mortgage on his home in Champlin, Minnesota.^[2]

3. On September 27, 2000, the Department received another complaint regarding Respondent's failure to disburse funds on a \$35,000 loan to Jennifer and Mark Whitson, which was secured by a second mortgage on their home in Northfield, Minnesota.^[3]

4. The Department has sent requests for information to Respondent on several occasions and has not received responses to its requests for information regarding Mr. Harmon's complaint and Mr. Whitson's complaint.^[4]

5. On November 3, 2000, the Department summarily suspended Respondent's mortgage originator license, license No. 20187248 pending resolution of this matter, pursuant to Minn. Stat. § 45.027, subd. 7(b) (Supp. 1999).^[5]

6. On November 3, 2000, The Respondent Mortgage Capital Resource Corporation was ordered to appear at a hearing to be held at 9:30 a.m. on December 4, 2000, at the Office of Administrative hearings in Minneapolis, Minnesota, pursuant to Minn. Stat. § 45.027, subds. 6, 7 (Supp. 1999) and 11 (1998).^[6]

7. The Notice of and Order for Hearing mailed to the Respondent included the following notice in boldface type on page 7:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's mortgage originator's license may be revoked or suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.^[7]

8. The Respondent did not appear at the hearing scheduled for December 4, 2000, or have an appearance made on its behalf. The Department's attorney did receive a letter dated November 17, 2000 from a Paralegal with the Respondent, 3001 Redhill Avenue, Building One, Suite 204, Costa Mesa, CA 92626 stating that the

Respondent "has closed all operations within the State of Minnesota and hereby voluntarily relinquishes its license which is the subject of the scheduled hearing. MCR will not be sending a representative to the hearing should it go forward."^[8] Respondent did not request a continuance or any other relief prior to the hearing.

9. Because Respondent failed to appear at the December 4, 2000 hearing in this matter, it is in default. Pursuant to Minn. R. 1400.6000 (1997), the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, and 45.027, subd. 7(b) (Supp. 1999).

2. The Department gave proper notice of the hearing in this matter and fulfilled all relevant substantive and procedural requirements of law or rule.

3. The Respondent, having made no appearance at the December 4, 2000 hearing, and not requesting a continuance or other relief, is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are hereby taken as true.

4. By failing to disburse the funds on Mr. Harmon's loan, Respondent has violated Minn. Stat. §58.13, subd. 1(4)(1998).

5. By failing to disburse the funds on the Whitsons' loan, Respondent has violated Minn. Stat. § 58.13, subd. 1(4)(1998).

6. By failing to disburse the funds on Mr. Harmon's loan, Respondent has engaged in an act or practice that demonstrates untrustworthiness, financial irresponsibility, or incompetence in violation of Minn. Stat. §58.12, subd. 1(b))(2)(v)(1998).

7. By failing to disburse the funds on the Whitsons' loan, Respondent has engaged in an act or practice that demonstrates untrustworthiness, financial irresponsibility, or incompetence in violation of Minn. Stat. §58.12, subd. 1(b)(2)(v)(1998).

8. By repeatedly failing to respond to the department's requests for information, Respondent has violated Minn. Stat. §45.027, subd. 1a (1998)

9. As a result of Conclusions 3-9 above, the Commissioner may take disciplinary action against Respondent's Mortgage Originator License No. 20187248 pursuant to Minn. Stat. § 45.027, subds. 6 and 7 (Supp. 1999), and 11 (1998)

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that appropriate disciplinary action be taken against the Mortgage Originator License No. 20187248 of Mortgage Capital Resource Corporation.

Dated this 29th day of December 2000.

PHYLLIS A. REHA
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail.

Reported: Default.

^[1] Ex. A, pg.1.

^[2] Ex. A, pg. 2; Department of Commerce File No. MO2007492/CMF

^[3] Ex. A, Pg. 3; Department of Commerce File No. MO2004897/CMF

^[4] Ex. A, pgs. 3, 4.

^[5] Ex. A, pg. 5.

^[6] Ex. A, pg. 5.

^[7] Ex. A, pg. 7.

^[8] Ex. F.